

**IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, WHEATON, ILLINOIS**

**JAMES “PATE” PHILIP, individually and
as Illinois Senate President, HENRY
HYDE, and the VILLAGE OF
BENSENVILLE, ILLINOIS**

Plaintiffs,

v.

**GEORGE H. RYAN, Governor of the State
of Illinois; and RICHARD M. DALEY,
Mayor of the City of Chicago,**

Defendants.

No. _____

COMPLAINT

NOW COME plaintiffs James “Pate” Philip, Henry Hyde and the Village of Bensenville and complaining of George H. Ryan, Governor of the State of Illinois, and Richard M. Daley, Mayor of the City of Chicago, state as follows:

COUNT I

1. On the evening of December 5, 2001, Defendant George Ryan entered into a closed door negotiating session with Defendant Richard M. Daley at Chicago’s City Hall. At the close of that negotiating session on December 5, 2001, at approximately 10:00 PM, Defendant George Ryan announced that he had reached an “agreement” with Defendant Daley whereby Defendant George Ryan, as Governor of the State of Illinois, had given State of Illinois approval to a proposed expansion plan for O’Hare International Airport put forward by Defendant Richard Daley.

2. Defendant George Ryan is the Governor of the State of Illinois. Defendant George Ryan has no authority to act on behalf of the State of Illinois in his personal capacity. In his official capacity as Governor and as a legal representative of the State of Illinois, Defendant George Ryan has only that authority conferred upon him by

the Constitution and statutes of the State of Illinois. As Governor he is subject to the constraints and limitations of the Constitution and statutes of the State of Illinois.

3. Defendant Richard M. Daley is the Mayor of the City of Chicago, Illinois. Defendant Richard Daley has no authority in his personal capacity. In his official capacity as Mayor, Defendant Richard has only that authority conferred upon him by the Constitution and statutes of the State of Illinois (and any authority granted by Chicago city ordinances enacted within the grant and limits of the authority granted by the State Constitution and statutes). As Mayor, he is subject to the constraints and limitations of the Constitution and statutes of the State of Illinois.

4. As part of the “agreement” announced by Defendant George Ryan and Richard Daley on December 5, 2001, Governor Ryan purported to agree on behalf of the State of Illinois to a proposed O’Hare expansion program that will involve, *inter alia*:

- A. the acquisition by Chicago of several hundred acres of residential and commercial real estate in DuPage County and Cook County outside the corporate boundaries of the City of Chicago resulting in severe economic losses to the tax base of surrounding local governments and destroying the single largest concentration of housing in DuPage County, Illinois affordable to persons and families of moderate income.
- B. the construction of airplane processing capacity to allow O’Hare to grow in flight operations from a current level of approximately 900,000 flights per year to approximately 1, 600,000 flights per year.

5. The noise and air pollution emissions from 1,600,000 operations will have significantly greater impacts on the quality of life and health and safety of residents of surrounding communities — including communities in DuPage County.

6. Defendant George Ryan’s December 5, 2001 agreement with Defendant Richard Daley to expand O’Hare Airport attempts to usurp powers exclusively held by

the Illinois General Assembly, in violation of the Separation of Powers provision of the Illinois Constitution, Ill. Const. art. II, § 1.

7. Under Illinois law the Governor has only the authority granted to him by either the Illinois Constitution or by statute enacted by the Illinois General Assembly. Governor George Ryan's agreement with Mayor Daley to expand O'Hare Airport is beyond the authority granted to the Governor, under the Illinois Constitution, or any Illinois statute. Governor George Ryan has no authority under Illinois law to enter into such an agreement.

8. Under Illinois law the authority of the State to build airports rests with the Illinois General Assembly, not the Governor.

9. Under Illinois law, Chicago and the Mayor of Chicago have only the power granted to them by either the Illinois Constitution or by statute enacted by the Illinois General Assembly.

10. Under Illinois law the authority to build and expand a regional transportation facility such as O'Hare Airport does not fall within the grant to Chicago of "home rule" authority of the Illinois Constitution "pertaining to its government and affairs." Ill. Const. Art. VII, §6. Any grant of state authority and legal power to build or expand O'Hare Airport must come from a statutory grant of authority by the General Assembly.

11. Under Illinois law, the delegation of a state power or authority by the General Assembly to a political subdivision of the state is a grant of a state power to the political subdivision of the state. In such areas, the political subdivision has no inherent power of its own, but serves as an agent of the state power that has been delegated by the General Assembly. Any grant of such power by the General Assembly is narrowly construed and the political subdivision claiming such authority from the General Assembly must point to the statute granting such authority and demonstrate that the

political subdivision has complied with the terms, conditions, and limitations imposed by the General Assembly in making the statutory grant.

12. As it relates to Chicago, the Illinois General Assembly has delegated the state power to build airports to the City of Chicago by statute. 65 ILCS 5/11-101-1, *et seq.*, and 65 ILCS 5/11-102.1, *et seq.* Included in this statutory authorization by the General Assembly is the state law power to acquire land (by condemnation if necessary) outside the territorial boundaries of the City of Chicago. 65 ILCS 5/11-102-4. However, all of the specific statutory powers delegated to Chicago under Article 11 of the Municipal Code — including the power to acquire land outside the territorial boundaries of Chicago — are expressly conditioned by the General Assembly on Chicago’s prior application for and receipt of a “certificate of approval” from the Illinois Department of Transportation under §47 the Illinois Aeronautics Act (620 ILCS 5/47). See 65 ILCS 5/11-102-10 (“The provisions of this Division 102 are subject to the provisions of the Illinois Aeronautics Act, as heretofore and hereafter amended.”).

13. The only mechanism established under Illinois law for the City of Chicago to get authority and approval from the State of Illinois for Chicago’s proposed expansion program at O’Hare — and the related authority and approval of Chicago’s acquisition of land outside its corporate boundaries — is by compliance with the procedural requirements of the Illinois Aeronautics Act established by the General Assembly and specifically, the permitting (“certificate of approval”) process set forth in §47 of that Act.

14. Neither Defendant George Ryan nor Defendant Richard Daley has followed the requirements of the Illinois Aeronautics Act to obtain State of Illinois approval for Chicago’s O’Hare expansion project. Chicago has not applied for not has Chicago received a certificate of approval under §47 of the Illinois Aeronautics Act.

15. By claiming that he approved Chicago’s O’Hare expansion plan in his closed door December 5, 2001 “agreement” without following the requirements of the Illinois Aeronautics Act, Defendant George Ryan acted outside of and in derogation of

the authority of the Governor of the State under the Constitution and statutes of the State of Illinois. By asserting approval action contrary to the approval process established by the General Assembly, Defendant George Ryan's December 5, 2001 agreement is an attempt to usurp the powers and authority of the Illinois General Assembly and is a violation of the Separation of Powers provision of the Illinois Constitution.

16. By asserting approval action contrary to the approval process established by the General Assembly and without any authority to take such action under either the Constitution and statutes of the State of Illinois, Defendant George Ryan's December 5, 2001 agreement is an *ultra vires* action.

17. Plaintiff James Pate Philip is the President of the Illinois Senate and is also a resident of the Village of Wood Dale, Illinois, in close proximity to O'Hare Airport. Plaintiff Philip is bringing this suit to restrain Defendants Ryan and Daley from engaging in acts which violate the restrictions on authority imposed by the Illinois Constitution and the Illinois General Assembly and for affirmative relief compelling Defendants Ryan and Daley to comply with the restrictions on authority imposed by the Illinois Constitution and the Illinois General Assembly. Plaintiff Philip will be harmed by the unlawful actions of the Defendants in that Defendants actions usurp and ignore the authority of the Illinois General Assembly. Plaintiff Philip will also be harmed as a resident of Wood Dale by the increased noise and air pollution generated by the massive O'Hare expansion program unlawfully approved by Defendant George Ryan in the December 5, 2001 agreement with Defendant Daley.

18. Plaintiff Henry Hyde is a resident of Wood Dale Illinois, in close proximity to O'Hare Airport. Plaintiff Hyde will be harmed as a resident of Wood Dale by the increased noise and air pollution generated by the massive O'Hare expansion program unlawfully approved by Defendant George Ryan in the December 5, 2001 agreement with Defendant Daley.

19. Plaintiff Village of Bensenville will also be harmed by the taking of land in Bensenville by the City of Chicago for a proposed new runway and by the increased noise and air pollution generated by the massive O'Hare expansion program unlawfully approved by Defendant George Ryan in the December 5, 2001 agreement with Defendant Daley.

20. Venue is proper in DuPage County, in that much of the proposed expansion of O'Hare in the Chicago proposal purportedly approved by Defendant George Ryan on December 5, 2001 — including the acquisition of several hundred homes in DuPage County — takes place in DuPage County. Indeed, on information and belief, Chicago is currently acquiring land in Bensenville, DuPage County for purposes of acquiring the site for a new runway at O'Hare.

21. Defendant George Ryan had no authority under the Illinois Constitution and statutes to enter into the December 5, 2001 "agreement" with the City of Chicago whereby Defendant George Ryan purported to approve (as Governor of and representative of the State of Illinois) Chicago's proposed O'Hare expansion plan, including acquisition of land outside Chicago's territorial boundaries in DuPage County and Cook County, Illinois.

WHEREFORE, Plaintiff James Pate Philip, Henry Hyde, and the Village of Bensenville ask this Court to enter an order declaring that the December 5, 2001 agreement between Governor Ryan and Mayor Daley to expand O'Hare Airport is illegal, without authority, and without force and effect.

COUNT II

22. Paragraphs 1-21 of this Complaint are incorporated herein, as if fully restated.

23. The only authority Defendant Richard Daley (as the elected representative of the City of Chicago) has to build airports — including his only authority to acquire land for airport purposes outside Chicago’s territorial boundaries — comes from the Illinois General Assembly. The City of Chicago does not have “home rule” authority to build regional airport facilities such as O’Hare Airport. Chicago must find its authority to act as to airports in express statutory authorization from the General Assembly.

24. The only authority granted by the Illinois General Assembly for Chicago to build airports and take real estate outside Chicago’s territorial boundaries for airport purposes comes from the Illinois Municipal Code, 65 ILCS 5/11-101-1, *et seq.*, and 65 ILCS 5/11-102.1, *et seq.* In turn, that grant of authority by the General Assembly is expressly conditioned upon obtaining on Chicago’s prior application for and receipt of a “certificate of approval” from the Illinois Department of Transportation under §47 the Illinois Aeronautics Act (620 ILCS 5/47). See 65 ILCS 5/11-102-10 (“The provisions of this Division 102 are subject to the provisions of the Illinois Aeronautics Act, as heretofore and hereafter amended.”).

25. Neither Defendant Richard M. Daley nor the City of Chicago has legal authority under the statutory delegation of airport power from the General Assembly to enter into any “agreement” with the Governor or any other representative of the State of Illinois whereby the Governor would “agree” to approve Chicago’s proposed airport development. The sole procedure established by the General Assembly for obtaining state approval is the certificate of approval process of §47 of the Illinois Aeronautics Act.

26. Neither Defendant Richard M. Daley nor the City of Chicago has legal authority under the statutory delegation of airport power from the General Assembly to enter into the December 5, 2001 “agreement” with Defendant George Ryan.

27. Under Illinois law, contracts or agreements by governmental bodies entered into without authorization or without following the procedural requirements established by the General Assembly are void *ab initio*.

28. Defendant Richard M. Daley had no lawful authority to enter into the December 5, 2001 “agreement” with Defendant George Ryan whereby Defendant George Ryan purported to approve (as Governor of and representative of the State of Illinois) Chicago’s proposed O’Hare expansion plan, including acquisition of land outside Chicago’s territorial boundaries in DuPage County and Cook County, Illinois.

WHEREFORE, Plaintiff James Pate Philip, Henry Hyde, and the Village of Bensenville ask this Court to enter an order declaring that the December 5, 2001 agreement between Governor Ryan and Mayor Daley to expand O’Hare Airport is illegal, without authority, and without force and effect.

COUNT III

22. Paragraphs 1-21 of this Complaint are incorporated herein, as if fully restated.

23. Recognizing that their December 5, 2001 agreement was illegal and unlawful under Illinois law and that because of that unlawful nature Chicago currently has no authority under Illinois law to build the proposed O’Hare expansion (including the taking of real estate in DuPage County and Cook County outside Chicago’s territorial boundaries) Defendants George Ryan and Richard Daley have requested that Congress codify as federal law their agreement to expand O’Hare Airport, by incorporating it in federal legislation proposed under a bill entitled “The National Aviation Capacity Expansion Act of 2002,” U.S. Senate Bill No. 2039.

24. Defendants George Ryan and Richard Daley take the position that Congress can somehow provide “federal” authorization to the City of Chicago to undertake the actions set forth in the December 5, 2001 agreement — including the authority to take land in DuPage outside the territorial limits of Chicago — even though such actions are not authorized by Illinois State law.

25. Defendant George Ryan and Defendant Richard Daley have represented and maintain that their agreement to expand O’Hare Airport is an agreement entered into by the State of Illinois. An April 18, 2002, press release issued by United States Senator Dick Durbin, the chief sponsor in the U.S. Senate for U.S. Senate Bill No. 2039, states:

“The National Aviation Capacity Expansion Act of 2002 is the result of an historic agreement between the State of Illinois and the City of Chicago, both of which have requested that their proposal be codified in federal law.”

26. Political subdivisions of the State of Illinois like Chicago have only those powers and authorities conferred upon them by either the “home rule” provision of the Illinois Constitution or (where “home rule” does not apply) by the statutory grants of power by the Illinois General Assembly. Political subdivisions of the State of Illinois like Chicago are creations of state law and can exercise only those powers granted to them by state law.

27. The federal Congress has certain plenary powers to create and empower federal political entities. However the federal Congress has no power to create powers and authority in political subdivisions of the States where the State has chosen not to confer such power on the political subdivision of the State.

28. Here the Illinois General Assembly has expressly limited the state law power delegated to Chicago to build airports — including the authority to take land in DuPage outside the territorial limits of Chicago — upon the express condition that Chicago first comply with the Illinois Aeronautics Act, including the requirement that Chicago first obtain a certificate of approval from the Illinois Department of

Transportation under §47 of the Illinois Aeronautics Act. Chicago has not applied for nor has the Illinois Department of Transportation issued a certificate of approval under §47 for the proposed O'Hare expansion, including the taking of land in DuPage County outside the territorial limits of Chicago.

29. Since Chicago has no current authority under state law (absent a §47 certificate under the Illinois Aeronautics Act) to build the proposed O'Hare expansion project, including the taking of land in DuPage outside the territorial limits of Chicago, Chicago has no power under state law to perform the actions set forth in the December 5, 2001 agreement. Absent such power under state law, the federal government cannot infuse in Chicago (a creation of state law whose powers and limitations are defined by state law) federal authority to do that which is prohibited by state law.

30. The only power and authority that can be exercised by a political subdivision created by Illinois state law is that power and authority that is conferred upon the state political subdivision by the Illinois Constitution or by statutes passed by the Illinois General Assembly. The state political subdivision can exercise no power or authority unless that action has been authorized by its creator under the Constitution and statutes of the State of Illinois.

31. The attempt by Defendants George Ryan and Richard Daley to go around the fundamental limitations established by the Illinois Constitution and statutes on the power and authority of Illinois state political subdivisions (through the mechanism of so-called "federal" authorization of the O'Hare expansion) is a direct attack on the core constitutional structure of Illinois government. Defendants George Ryan and Richard Daley are attempting to sweep away the commands and restrictions on their state law authority established by the Illinois Constitution and Illinois General Assembly and use the pretext of "federal" authorization to supplant the absence of state law authority. It is a fundamental axiom of our state constitutional structure that political subdivisions are creations and creatures of state law which only have those powers conferred upon them

by state law. A corollary of this axiom is that actions taken by political subdivisions which are contrary to or not in accord with the state law grant of power and the limitations imposed by state law on that power are void.

32. Neither Defendant Governor George Ryan nor Defendant Chicago Mayor Richard Daley has authority under the Illinois Constitution and Illinois state statutes to seek and urge the passage of federal legislation that would destroy and override the statutes of the Illinois General Assembly.

WHEREFORE, Plaintiff James Pate Philip, Henry Hyde, and the Village of Bensenville ask this Court to:

1. Declare that Chicago has only those powers and authority conferred upon it by the Illinois Constitution and state statutes passed by the Illinois General Assembly and that federal law cannot confer power on Chicago (a political subdivision and creation of the State of Illinois) to take actions where such actions are contrary to the authority and limitations on authority imposed on Chicago by the Illinois Constitution and the Illinois General Assembly.

2. Grant such other relief as necessary to enforce upon Chicago the limits on Chicago's authority to build airports (including the taking of land in DuPage outside the territorial limits of Chicago) imposed by the Illinois General Assembly. regarding operation and expansion of O'Hare Airport.

**JAMES "PATE" PHILIP, HENRY HYDE,
and VILLAGE OF BENSENVILLE,**

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